

AMENDED IN SENATE MARCH 16, 2006

SENATE BILL

No. 1212

Introduced by Senator Torlakson

January 30, 2006

An act to amend Sections ~~1777~~ 1771.7, 1777, 1788, and 1790 of the Health and Safety Code, relating to continuing care.

LEGISLATIVE COUNSEL'S DIGEST

SB 1212, as amended, Torlakson. Continuing care retirement communities: advisory committee memberships and provider financial requirements.

Existing law provides for the regulation by the State Department of Social Services of activities relating to continuing care contracts that govern care provided to an elderly resident in a continuing care retirement community for the duration of the resident's life or a term in excess of one year.

Existing law provides that the Continuing Care Advisory Committee of the department, comprised of specified membership, shall act in an advisory capacity to the department on matters relating to continuing care contracts.

This bill would revise the membership and administrative operating procedures of the committee.

Existing law requires that a continuing care contract shall contain specified elements, including requirements for procedures and conditions under which a resident of a continuing care retirement community may be transferred.

This bill would revise those procedures.

Existing law requires each continuing care provider to submit an annual report of its financial condition, consisting of audited financial statements and required reserve calculations. Existing law further

requires the report to include full details on the status of reserves and on per capita costs of operation for each continuing care retirement community operated.

This bill would define “reserves” for purposes of the continuing care provider’s annual report. The bill would specify the details to be provided in the report with respect to these reserves.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1771.7 of the Health and Safety Code is
2 amended to read:

3 1771.7. (a) No resident of a continuing care retirement
4 community shall be deprived of any civil or legal right, benefit,
5 or privilege guaranteed by law, by the California Constitution, or
6 by the United States Constitution solely by reason of status as a
7 resident of a community. In addition, because of the discretely
8 different character of residential living unit programs that are a
9 part of continuing care retirement communities, this section shall
10 augment Chapter 3.9 (commencing with Section 1599), Sections
11 ~~73523~~ 72527 and 87572 of Title 22 of the California Code of
12 Regulations, and other applicable state and federal law and
13 regulations.

14 (b) A prospective resident shall have the right to visit each of
15 the different care levels and to inspect assisted living and skilled
16 nursing home licensing reports including, but not limited to, the
17 most recent inspection reports and findings of complaint
18 investigations covering a period of no less than two years, prior
19 to signing a continuing care contract.

20 (c) All residents in residential living units shall have all of the
21 following rights:

22 (1) To live in an attractive, safe, and well maintained physical
23 environment.

24 (2) To live in an environment that enhances personal dignity,
25 maintains independence, and encourages self-determination.

26 (3) To participate in activities that meet individual physical,
27 intellectual, social, and spiritual needs.

1 (4) To expect effective channels of communication between
2 residents and staff, and between residents and the administration
3 or provider's governing body.

4 (5) To receive a clear and complete written contract that
5 establishes the mutual rights and obligations of the resident and
6 the continuing care retirement community.

7 (6) To manage his or her financial affairs.

8 (7) To be assured that all donations, contributions, gifts, or
9 purchases of provider-sponsored financial products shall be
10 voluntary, and may not be a condition of acceptance or of
11 ongoing eligibility for services.

12 (8) To maintain and establish ties to the local community.

13 (9) To organize and participate freely in the operation of
14 independent resident organizations and associations.

15 (d) A continuing care retirement community shall maintain an
16 environment that enhances the residents' self-determination and
17 independence. The provider shall do both of the following:

18 (1) Encourage the formation of a resident association by
19 interested residents who may elect a governing body. The
20 provider shall provide space and post notices for meetings, and
21 provide assistance in attending meetings for those residents who
22 request it. In order to promote a free exchange of ideas, at least
23 part of each meeting shall be conducted without the presence of
24 any continuing care retirement community personnel. The
25 association may, among other things, make recommendations to
26 management regarding resident issues that impact the residents'
27 quality of life, quality of care, exercise of rights, safety and
28 quality of the physical environment, concerns about the contract,
29 fiscal matters, or other issues of concern to residents. The
30 management shall respond, in writing, to a written request or
31 concern of the resident association within 20 working days of
32 receiving the written request or concern. Meetings shall be open
33 to all residents to attend as well as to present issues. Executive
34 sessions of the governing body shall be attended only by the
35 governing body.

36 (2) Establish policies and procedures that promote the sharing
37 of information, dialogue between residents and management, and
38 access to the provider's governing body. The provider shall
39 biennially conduct a resident satisfaction survey that shall be
40 made available to the resident association or its governing body,

1 or, if neither exists, to a committee of residents at least 14 days
2 prior to the next semiannual meeting of residents and the
3 governing board of the provider required by subdivision (c) of
4 Section 1771.8. A copy of the survey shall be posted in a
5 conspicuous location at each facility.

6 (e) In addition to any statutory or regulatory bill of rights
7 required to be provided to residents of residential care facilities
8 for the elderly or skilled nursing facilities, the provider shall
9 provide a copy of the bill of rights prescribed by this section to
10 each resident at the time or before the resident signs a continuing
11 care contract, and at any time when the resident is proposed to be
12 moved to a different level of care.

13 (f) Each continuing care retirement community shall
14 prominently post in areas accessible to the residents and visitors
15 a notice that a copy of rights applicable to residents pursuant to
16 this section and any governing regulation issued by the
17 Continuing Care Contracts Branch of the State Department of
18 Social Services is available upon request from the provider. The
19 notice shall also state that the residents have a right to file a
20 complaint with the Continuing Care Contracts Branch for any
21 violation of those rights and shall contain information explaining
22 how a complaint may be filed, including the telephone number
23 and address of the Continuing Care Contracts Branch.

24 (g) The resident has the right to freely exercise all rights
25 pursuant to this section, in addition to political rights, without
26 retaliation by the provider.

27 (h) The department may, upon receiving a complaint of a
28 violation of this section, request a copy of the policies and
29 procedures along with documentation on the conduct and
30 findings of any self-evaluations and consult with the Continuing
31 Care Advisory Committee for determination of compliance.

32 (i) Failure to comply with this section shall be grounds for the
33 imposition of conditions on, suspension of, or revocation of the
34 provisional certificate of authority or certificate of authority
35 pursuant to Section 1793.21.

36 (j) Failure to comply with this section constitutes a violation of
37 residents' rights. Pursuant to Section 1569.49 of the Health and
38 Safety Code, the department shall impose and collect a civil
39 penalty of not more than one hundred fifty dollars (\$150) per

1 violation upon a continuing care retirement community that
2 violates a right guaranteed by this section.

3 **SECTION 1.**

4 *SEC. 2.* Section 1777 of the Health and Safety Code is
5 amended to read:

6 1777. (a) The Continuing Care Advisory Committee of the
7 department shall act in an advisory capacity to the department on
8 matters relating to continuing care contracts.

9 (b) The members of the committee shall include:

10 (1) Three representatives—~~of who are current, full-time~~
11 *management employees of different* nonprofit continuing care
12 providers pursuant to this chapter, each of whom shall *be a*
13 *current provider in good standing with the department and shall*
14 have offered continuing care services for at least five years prior
15 to appointment. One member shall represent a multifacility
16 provider and shall be appointed by the Governor in even years.
17 One member shall be appointed by the Senate Committee on
18 Rules in odd years. One member shall be appointed by the
19 Speaker of the Assembly in odd years.

20 (2) Four senior citizens who are not eligible for appointment
21 pursuant to paragraphs (1) and (3) who shall represent consumers
22 of continuing care services, all of whom shall be residents of
23 continuing care retirement communities but not residents of the
24 same provider. ~~Any~~ senior citizen who serves or has served on
25 the board of directors of any provider or provider organization *in*
26 *the past three years* shall not be eligible for appointment. Two
27 senior citizen members shall be appointed by the Governor in
28 even years. One senior citizen member shall be appointed by the
29 Senate Committee on Rules in odd years. One senior citizen
30 member shall be appointed by the Speaker of the Assembly in
31 odd years.

32 (3) A representative of a for-profit provider of continuing care
33 contracts pursuant to this chapter. This member shall be
34 appointed by the Governor in even years, *shall be a current,*
35 *full-time management employee of a provider in good standing*
36 *with the department, and shall have offered continuing care*
37 *services for at least five years prior to his or her appointment.*

38 (4) One representative of residents of continuing care
39 retirement communities appointed by the senior citizen
40 representatives on the committee, *who is a resident of a*

1 continuing care retirement community of a provider other than
2 those of the senior citizen representatives appointed pursuant to
3 paragraph (2). Any senior citizen who has served on the board of
4 directors of any provider or provider organization within the
5 past three years shall not be eligible for appointment.

6 (5) One representative of either nonprofit or for-profit
7 providers appointed by the representatives of nonprofit and
8 for-profit providers on the committee.

9 (c) The consultants to the committee shall include the
10 following:

11 (1) An actuary with experience in the continuing care industry,
12 who shall be appointed by the committee as a consultant in
13 even-numbered years.

14 (2) A certified public accountant with experience in the
15 continuing care industry shall be appointed by the committee as a
16 consultant in odd-numbered years.

17 (d) The committee members and consultants shall serve
18 two-year terms and be appointed based on their interest and
19 expertise in the subject area. ~~The Governor shall designate the~~
20 ~~chairperson for the committee with the advice and consent of the~~
21 ~~Senate.~~ A member may be reappointed at the pleasure of the
22 appointing power. The appointing power shall fill all vacancies
23 on the committee within 60 days. All members shall continue to
24 serve until their successors are appointed and qualified.

25 (e) The committee chair shall alternate between a provider and
26 resident members each year. The chairperson shall be selected by
27 resident members in odd-numbered years and by provider
28 members in even-numbered years.

29 (f) The members of the committee and the committee
30 consultants shall serve without compensation, except that each
31 member shall be paid from the Continuing Care Provider Fee
32 Fund a per diem of twenty-five dollars (\$25) for each day's
33 attendance at a meeting of the committee not to exceed six days
34 in any month. The committee members and consultants shall also
35 receive their actual and necessary travel expenses incurred in the
36 course of their duties. Reimbursement of travel expenses shall be
37 at rates not to exceed those applicable to comparable state
38 employees under Department of Personnel Administration
39 regulations.

1 (g) Prior to commencement of service, each member shall file
2 with the department a statement of economic interest and a
3 statement of conflict of interest pursuant to Article 3
4 (commencing with Section 87300) of the Government Code.

5 (h) If, during the period of appointment, any member no
6 longer meets the qualifications of subdivision (b), that member
7 shall submit his or her resignation to the committee chair within
8 ~~60~~ 10 days. The *committee* chair shall notify the appointing
9 power and a qualified new member shall be appointed by the
10 same power to fulfill the remainder of the term.

11 *SEC. 3. Section 1788 of the Health and Safety Code is*
12 *amended to read:*

13 1788. (a) A continuing care contract shall contain all of the
14 following:

15 (1) The legal name and address of each provider.

16 (2) The name and address of the continuing care retirement
17 community.

18 (3) The resident's name and the identity of the unit the
19 resident will occupy.

20 (4) If there is a transferor other than the resident, the transferor
21 shall be a party to the contract and the transferor's name and
22 address shall be specified.

23 (5) If the provider has used the name of any charitable or
24 religious or nonprofit organization in its title before January 1,
25 1979, and continues to use that name, and that organization is not
26 responsible for the financial and contractual obligations of the
27 provider or the obligations specified in the continuing care
28 contract, the provider shall include in every continuing care
29 contract a conspicuous statement which clearly informs the
30 resident that the organization is not financially responsible.

31 (6) The date the continuing care contract is signed by the
32 resident and, where applicable, any other transferor.

33 (7) The duration of the continuing care contract.

34 (8) A list of the services that will be made available to the
35 resident as required to provide the appropriate level of care. The
36 list of services shall include the services required as a condition
37 for licensure as a residential care facility for the elderly,
38 including all of the following:

1 (A) Regular observation of the resident's health status to
2 ensure that his or her dietary needs, social needs, and needs for
3 special services are satisfied.

4 (B) Safe and healthful living accommodations, including
5 housekeeping services and utilities.

6 (C) Maintenance of house rules for the protection of residents.

7 (D) A planned activities program, which includes social and
8 recreational activities appropriate to the interests and capabilities
9 of the resident.

10 (E) Three balanced, nutritious meals and snacks made
11 available daily, including special diets prescribed by a physician
12 as a medical necessity.

13 (F) Assisted living services.

14 (G) Assistance with taking medications.

15 (H) Central storing and distribution of medications.

16 (I) Arrangements to meet health needs, including arranging
17 transportation.

18 (9) An itemization of the services that are included in the
19 monthly fee and the services that are available at an extra charge.
20 The provider shall attach a current fee schedule to the continuing
21 care contract.

22 (10) The procedures and conditions under which a resident
23 may be voluntarily and involuntarily transferred from a
24 designated living unit. The transfer procedures, ~~at a minimum,~~
25 ~~shall include the following provisions addressing all of the~~
26 ~~following circumstances under which a transfer may be~~
27 ~~authorized:~~

28 (A) A continuing care retirement community ~~shall~~ *may*
29 transfer a resident ~~under only if one of the following conditions~~
30 *apply*, taking into ~~consideration~~ *account* the appropriateness and
31 necessity of the transfer and the goal of promoting resident
32 independence:

33 (i) The resident is nonambulatory. The definition of
34 "nonambulatory," as provided in Section 13131, shall either be
35 stated in full in the continuing care contract or be cited. If Section
36 13131 is cited, a copy of the statute shall be made available to the
37 resident, either as an attachment to the continuing care contract
38 or by specifying that it will be provided upon request. If a
39 nonambulatory resident occupies a room that has a fire clearance
40 for nonambulatory residence, transfer shall not be necessary.

1 (ii) The resident develops a physical or mental condition that
2 endangers the health, safety, or well-being of the resident or
3 another person.

4 (iii) The resident's condition or needs require the resident's
5 transfer to an assisted living care unit or skilled nursing facility,
6 because the level of care required by the resident exceeds that
7 which may be lawfully provided in the living unit.

8 (iv) The resident's condition or needs require the resident's
9 transfer to a nursing facility, hospital, or other facility, and the
10 provider has no facilities available to provide that level of care.

11 (B) Before the continuing care retirement community transfers
12 a resident under any of the conditions set forth in subparagraph
13 (A), the community shall satisfy all of the following
14 requirements:

15 (i) Involve the resident and the resident's responsible person,
16 as defined in paragraph (6) of subdivision (r) of Section 87101 of
17 Title 22 of the California Code of Regulations, and upon the
18 resident's or responsible person's request, family members, or
19 the resident's physician or other appropriate health professional,
20 in the assessment process that forms the basis for the level of
21 care transfer decision by the provider. The provider shall offer an
22 explanation of the assessment process. If an assessment tool or
23 tools, including scoring and evaluating criteria, are used in the
24 determination of the appropriateness of the transfer, the provider
25 shall make copies of the completed assessment available upon
26 the request of the resident or the resident's responsible person.

27 (ii) Prior to sending a formal notification of transfer, the
28 provider shall conduct a care conference with the resident and the
29 resident's responsible person, and upon the resident's or
30 responsible person's request, family members, and the resident's
31 health care professionals, to explain the reasons for transfer.

32 (iii) Notify the resident and the resident's responsible person
33 the reasons for the transfer in writing.

34 (iv) Notwithstanding any other provision of this subparagraph,
35 if the resident does not have impairment of cognitive abilities, the
36 resident may request that his or her responsible person not be
37 involved in the transfer process.

38 (v) The notice of transfer shall be made at least 30 days before
39 the transfer is expected to occur, except when the health or safety
40 of the resident or other residents is in danger, or the transfer is

1 required by the resident's urgent medical needs. Under those
2 circumstances, the written notice shall be made as soon as
3 practicable before the transfer.

4 (vi) The written notice shall contain the reasons for the
5 transfer, the effective date, the designated level of care or
6 location to which the resident will be transferred, a statement of
7 the resident's right to a review of the transfer decision at a care
8 conference, as provided for in subparagraph (C), and for disputed
9 transfer decisions, the right to review by the Continuing Care
10 Contracts Branch of the State Department of Social Services, as
11 provided for in subparagraph (D). The notice shall also contain
12 the name, address, and telephone number of the department's
13 Continuing Care Contracts Branch.

14 (vii) The continuing care community shall provide sufficient
15 preparation and orientation to the resident to ensure a safe and
16 orderly transfer and to minimize trauma.

17 (C) The resident has the right to review the transfer decision at
18 a subsequent care conference that shall include the resident, the
19 resident's responsible person, and upon the resident's or
20 responsible person's request, family members, the resident's
21 physician or other appropriate health care professional, and
22 members of the provider's interdisciplinary team. The local
23 ombudsperson may also be included in the care conference, upon
24 the request of the resident, the resident's responsible person, or
25 the provider.

26 (D) For disputed transfer decisions, the resident or the
27 resident's responsible person has the right to a prompt and timely
28 review of the transfer process by the Continuing Care Contracts
29 Branch of the State Department of Social Services.

30 (E) The decision of the department's Continuing Care
31 Contracts Branch shall be in writing and shall determine whether
32 the provider failed to comply with the transfer process pursuant
33 to subparagraphs (A) to (C), inclusive. Pending the decision of
34 the Continuing Care Contracts Branch, the provider shall specify
35 any additional care the provider believes is necessary in order for
36 the resident to remain in his or her unit. The resident may be
37 required to pay for the extra care, as provided in the contract.

38 (F) Transfer of a second resident when a shared
39 accommodation arrangement is terminated.

1 (G) *Other nonlevel of care transfers within the independent*
2 *living units.*

3 (11) Provisions describing any changes in the resident's
4 monthly fee and any changes in the entrance fee refund payable
5 to the resident that will occur if the resident transfers from any
6 unit.

7 (12) The provider's continuing obligations if any, in the event
8 a resident is transferred from the continuing care retirement
9 community to another facility.

10 (13) The provider's obligations, if any, to resume care upon
11 the resident's return after a transfer from the continuing care
12 retirement community.

13 (14) The provider's obligations to provide services to the
14 resident while the resident is absent from the continuing care
15 retirement community.

16 (15) The conditions under which the resident must
17 permanently release his or her living unit.

18 (16) If real or personal properties are transferred in lieu of
19 cash, a statement specifying each item's value at the time of
20 transfer, and how the value was ascertained.

21 (A) An itemized receipt which includes the information
22 described above is acceptable if incorporated as a part of the
23 continuing care contract.

24 (B) When real property is or will be transferred, the continuing
25 care contract shall include a statement that the deed or other
26 instrument of conveyance shall specify that the real property is
27 conveyed pursuant to a continuing care contract and may be
28 subject to rescission by the transferor within 90 days from the
29 date that the resident first occupies the residential unit.

30 (C) The failure to comply with paragraph (16) shall not affect
31 the validity of title to real property transferred pursuant to this
32 chapter.

33 (17) The amount of the entrance fee.

34 (18) In the event two parties have jointly paid the entrance fee
35 or other payment which allows them to occupy the unit, the
36 continuing care contract shall describe how any refund of
37 entrance fees is allocated.

38 (19) The amount of any processing fee.

39 (20) The amount of any monthly care fee.

1 (21) For continuing care contracts that require a monthly care
2 fee or other periodic payment, the continuing care contract shall
3 include the following:

4 (A) A statement that the occupancy and use of the
5 accommodations by the resident is contingent upon the regular
6 payment of the fee.

7 (B) The regular rate of payment agreed upon (per day, week,
8 or month).

9 (C) A provision specifying whether payment will be made in
10 advance or after services have been provided.

11 (D) A provision specifying the provider will adjust monthly
12 care fees for the resident's support, maintenance, board, or
13 lodging, when a resident requires medical attention while away
14 from the continuing care retirement community.

15 (E) A provision specifying whether a credit or allowance will
16 be given to a resident who is absent from the continuing care
17 retirement community or from meals. This provision shall also
18 state, when applicable, that the credit may be permitted at the
19 discretion or by special permission of the provider.

20 (F) A statement of billing practices, procedures, and timelines.
21 A provider shall allow a minimum of 14 days between the date a
22 bill is sent and the date payment is due. A charge for a late
23 payment may only be assessed if the amount and any condition
24 for the penalty is stated on the bill.

25 (22) All continuing care contracts that include monthly care
26 fees shall address changes in monthly care fees by including
27 either of the following provisions:

28 (A) For prepaid continuing care contracts, which include
29 monthly care fees, one of the following methods:

30 (i) Fees shall not be subject to change during the lifetime of
31 the agreement.

32 (ii) Fees shall not be increased by more than a specified
33 number of dollars in any one year and not more than a specified
34 number of dollars during the lifetime of the agreement.

35 (iii) Fees shall not be increased in excess of a specified
36 percentage over the preceding year and not more than a specified
37 percentage during the lifetime of the agreement.

38 (B) For monthly fee continuing care contracts, except prepaid
39 contracts, changes in monthly care fees shall be based on

1 projected costs, prior year per capita costs, and economic
2 indicators.

3 (23) A provision requiring that the provider give written notice
4 to the resident at least 30 days in advance of any change in the
5 resident's monthly care fees or in the price or scope of any
6 component of care or other services.

7 (24) A provision indicating whether the resident's rights under
8 the continuing care contract include any proprietary interests in
9 the assets of the provider or in the continuing care retirement
10 community, or both.

11 (25) If the continuing care retirement community property is
12 encumbered by a security interest that is senior to any claims the
13 residents may have to enforce continuing care contracts, a
14 provision shall advise the residents that any claims they may
15 have under the continuing care contract are subordinate to the
16 rights of the secured lender. For equity projects, the continuing
17 care contract shall specify the type and extent of the equity
18 interest and whether any entity holds a security interest.

19 (26) Notice that the living units are part of a continuing care
20 retirement community that is licensed as a residential care facility
21 for the elderly and, as a result, any duly authorized agent of the
22 department may, upon proper identification and upon stating the
23 purpose of his or her visit, enter and inspect the entire premises at
24 any time, without advance notice.

25 (27) A conspicuous statement, in at least 10-point boldface
26 type in immediate proximity to the space reserved for the
27 signatures of the resident and, if applicable, the transferor, that
28 provides as follows: "You, the resident or transferor, may cancel
29 the transaction without cause at any time within 90 days from the
30 date you first occupy your living unit. See the attached notice of
31 cancellation form for an explanation of this right."

32 (28) Notice that during the cancellation period, the continuing
33 care contract may be canceled upon 30 days' written notice by
34 the provider without cause, or that the provider waives this right.

35 (29) The terms and conditions under which the continuing care
36 contract may be terminated after the cancellation period by either
37 party, including any health or financial conditions.

38 (30) A statement that, after the cancellation period, a provider
39 may unilaterally terminate the continuing care contract only if the
40 provider has good and sufficient cause.

1 (A) Any continuing care contract containing a clause that
2 provides for a continuing care contract to be terminated for “just
3 cause,” “good cause,” or other similar provision, shall also
4 include a provision that none of the following activities by the
5 resident, or on behalf of the resident, constitutes “just cause,”
6 “good cause,” or otherwise activates the termination provision:

7 (i) Filing or lodging a formal complaint with the department or
8 other appropriate authority.

9 (ii) Participation in an organization or affiliation of residents,
10 or other similar lawful activity.

11 (B) The provision required by this paragraph shall also state
12 that the provider shall not discriminate or retaliate in any manner
13 against any resident of a continuing care retirement community
14 for contacting the department, or any other state, county, or city
15 agency, or any elected or appointed government official to file a
16 complaint or for any other reason, or for participation in a
17 residents’ organization or association.

18 (C) Nothing in this paragraph diminishes the provider’s ability
19 to terminate the continuing care contract for good and sufficient
20 cause.

21 (31) A statement that at least 90 days’ written notice to the
22 resident is required for a unilateral termination of the continuing
23 care contract by the provider.

24 (32) A statement concerning the length of notice that a
25 resident is required to give the provider to voluntarily terminate
26 the continuing care contract after the cancellation period.

27 (33) The policy or terms for refunding any portion of the
28 entrance fee, in the event of cancellation, termination, or death.
29 Every continuing care contract that provides for a refund of all or
30 a part of the entrance fee shall also do all of the following:

31 (A) Specify the amount, if any, the resident has paid or will
32 pay for upgrades, special features, or modifications to the
33 resident’s unit.

34 (B) State that if the continuing care contract is cancelled or
35 terminated by the provider, the provider shall do both of the
36 following:

37 (i) Amortize the specified amount at the same rate as the
38 resident’s entrance fee.

39 (ii) Refund the unamortized balance to the resident at the same
40 time the provider pays the resident’s entrance fee refund.

(34) The following notice at the bottom of the signatory page:

“NOTICE”

(date)

This is a continuing care contract as defined by paragraph (8) of subdivision (c), or subdivision (l) of Section 1771 of the California Health and Safety Code. This continuing care contract form has been approved by the State Department of Social Services as required by subdivision (b) of Section 1787 of the California Health and Safety Code. The basis for this approval was a determination that (provider name) has submitted a contract that complies with the minimum statutory requirements applicable to continuing care contracts. The department does not approve or disapprove any of the financial or health care coverage provisions in this contract. Approval by the department is NOT a guaranty of performance or an endorsement of any continuing care contract provisions. Prospective transferors and residents are strongly encouraged to carefully consider the benefits and risks of this continuing care contract and to seek financial and legal advice before signing.

(35) The provider may not attempt to absolve itself in the continuing care contract from liability for its negligence by any statement to that effect, and shall include the following statement in the contract: “Nothing in this continuing care contract limits either the provider’s obligation to provide adequate care and supervision for the resident or any liability on the part of the provider which may result from the provider’s failure to provide this care and supervision.”

(b) A life care contract shall also provide that:

(1) All levels of care, including acute care and physicians’ and surgeons’ services will be provided to a resident.

(2) Care will be provided for the duration of the resident’s life unless the life care contract is canceled or terminated by the provider during the cancellation period or after the cancellation period for good cause.

(3) A comprehensive continuum of care will be provided to the resident, including skilled nursing, in a facility under the ownership and supervision of the provider on, or adjacent to, the continuing care retirement community premises.

1 (4) Monthly care fees will not be changed based on the
2 resident's level of care or service.

3 (5) A resident who becomes financially unable to pay his or
4 her monthly care fees shall be subsidized provided the resident's
5 financial need does not arise from action by the resident to divest
6 the resident of his or her assets.

7 (c) Continuing care contracts may include provisions that do
8 any of the following:

9 (1) Subsidize a resident who becomes financially unable to
10 pay for his or her monthly care fees at some future date. If a
11 continuing care contract provides for subsidizing a resident, it
12 may also provide for any of the following:

13 (A) The resident shall apply for any public assistance or other
14 aid for which he or she is eligible and that the provider may
15 apply for assistance on behalf of the resident.

16 (B) The provider's decision shall be final and conclusive
17 regarding any adjustments to be made or any action to be taken
18 regarding any charitable consideration extended to any of its
19 residents.

20 (C) The provider is entitled to payment for the actual costs of
21 care out of any property acquired by the resident subsequent to
22 any adjustment extended to the resident under paragraph (1), or
23 from any other property of the resident which the resident failed
24 to disclose.

25 (D) The provider may pay the monthly premium of the
26 resident's health insurance coverage under Medicare to ensure
27 that those payments will be made.

28 (E) The provider may receive an assignment from the resident
29 of the right to apply for and to receive the benefits, for and on
30 behalf of the resident.

31 (F) The provider is not responsible for the costs of furnishing
32 the resident with any services, supplies, and medication, when
33 reimbursement is reasonably available from any governmental
34 agency, or any private insurance.

35 (G) Any refund due to the resident at the termination of the
36 continuing care contract may be offset by any prior subsidy to the
37 resident by the provider.

38 (2) Limit responsibility for costs associated with the treatment
39 or medication of an ailment or illness existing prior to the date of
40 admission. In these cases, the medical or surgical exceptions, as

1 disclosed by the medical entrance examination, shall be listed in
2 the continuing care contract or in a medical report attached to and
3 made a part of the continuing care contract.

4 (3) Identify legal remedies which may be available to the
5 provider if the resident makes any material misrepresentation or
6 omission pertaining to the resident's assets or health.

7 (4) Restrict transfer or assignments of the resident's rights and
8 privileges under a continuing care contract due to the personal
9 nature of the continuing care contract.

10 (5) Protect the provider's ability to waive a resident's breach
11 of the terms or provisions of the continuing care contract in
12 specific instances without relinquishing its right to insist upon
13 full compliance by the resident with all terms or provisions in the
14 contract.

15 (6) Provide that the resident shall reimburse the provider for
16 any uninsured loss or damage to the resident's unit, beyond
17 normal wear and tear, resulting from the resident's carelessness
18 or negligence.

19 (7) Provide that the resident agrees to observe the off-limit
20 areas of the continuing care retirement community designated by
21 the provider for safety reasons. The provider may not include any
22 provision in a continuing care contract that absolves the provider
23 from liability for its negligence.

24 (8) Provide for the subrogation to the provider of the resident's
25 rights in the case of injury to a resident caused by the acts or
26 omissions of a third party, or for the assignment of the resident's
27 recovery or benefits in this case to the provider, to the extent of
28 the value of the goods and services furnished by the provider to
29 or on behalf of the resident as a result of the injury.

30 (9) Provide for a lien on any judgment, settlement, or recovery
31 for any additional expense incurred by the provider in caring for
32 the resident as a result of injury.

33 (10) Require the resident's cooperation and assistance in the
34 diligent prosecution of any claim or action against any third
35 party.

36 (11) Provide for the appointment of a conservator or guardian
37 by a court with jurisdiction in the event a resident becomes
38 unable to handle his or her personal or financial affairs.

1 (12) Allow a provider, whose property is tax exempt, to charge
2 the resident on a pro rata basis property taxes, or in-lieu taxes,
3 that the provider is required to pay.

4 (13) Make any other provision approved by the department.

5 (d) A copy of the resident's rights as described in Section
6 1771.7 shall be attached to every continuing care contract.

7 (e) A copy of the current audited financial statement of the
8 provider shall be attached to every continuing care contract. For
9 a provider whose current audited financial statement does not
10 accurately reflect the financial ability of the provider to fulfill the
11 continuing care contract obligations, the financial statement
12 attached to the continuing care contract shall include all of the
13 following:

14 (1) A disclosure that the reserve requirement has not yet been
15 determined or met, and that entrance fees will not be held in
16 escrow.

17 (2) A disclosure that the ability to provide the services
18 promised in the continuing care contract will depend on
19 successful compliance with the approved financial plan.

20 (3) A copy of the approved financial plan for meeting the
21 reserve requirements.

22 (4) Any other supplemental statements or attachments
23 necessary to accurately represent the provider's financial ability
24 to fulfill its continuing care contract obligations.

25 (f) A schedule of the average monthly care fees charged to
26 residents for each type of residential living unit for each of the
27 five years preceding execution of the continuing care contract
28 shall be attached to every continuing care contract. The provider
29 shall update this schedule annually at the end of each fiscal year.
30 If the continuing care retirement community has not been in
31 existence for five years, the information shall be provided for
32 each of the years the continuing care retirement community has
33 been in existence.

34 (g) If any continuing care contract provides for a health
35 insurance policy for the benefit of the resident, the provider shall
36 attach to the continuing care contract a binder complying with
37 Sections 382 and 382.5 of the Insurance Code.

38 (h) The provider shall attach to every continuing care contract
39 a completed form in duplicate, captioned "Notice of
40 Cancellation." The notice shall be easily detachable, and shall

1 contain, in at least 10-point boldface type, the following
2 statement:

3
4 “NOTICE OF CANCELLATION” (date)
5 Your first date of occupancy under this contract
6 is: _____
7

8
9 “You may cancel this transaction, without any penalty within
10 90 calendar days from the above date.

11 If you cancel, any property transferred, any payments made by
12 you under the contract, and any negotiable instrument executed
13 by you will be returned within 14 calendar days after making
14 possession of the living unit available to the provider. Any
15 security interest arising out of the transaction will be canceled.

16 If you cancel, you are obligated to pay a reasonable processing
17 fee to cover costs and to pay for the reasonable value of the
18 services received by you from the provider up to the date you
19 canceled or made available to the provider the possession of any
20 living unit delivered to you under this contract, whichever is
21 later.

22 If you cancel, you must return possession of any living unit
23 delivered to you under this contract to the provider in
24 substantially the same condition as when you took possession.

25 Possession of the living unit must be made available to the
26 provider within 20 calendar days of your notice of cancellation.
27 If you fail to make the possession of any living unit available to
28 the provider, then you remain liable for performance of all
29 obligations under the contract.

30 To cancel this transaction, mail or deliver a signed and dated
31 copy of this cancellation notice, or any other written notice, or
32 send a telegram

33
34 to _____
35 (Name of provider)
36 at _____
37 (Address of provider's place of business)

38 not later than midnight of _____ (date).

39 I hereby cancel this

40 transaction _____

(Resident or
Transferor's signature)"

~~SEC. 2.~~

SEC. 4. Section 1790 of the Health and Safety Code is amended to read:

1790. (a) Each provider that has obtained a provisional or final certificate of authority and each provider that possesses an inactive certificate of authority shall submit an annual report of its financial condition. The report shall consist of audited financial statements and required reserve calculations, with accompanying certified public accountants' opinions thereon, *the reserve information required by paragraph (2)*, Continuing Care Provider Fee and Calculation Sheet, evidence of fidelity bond as required by Section 1789.8, and certification that the continuing care contract in use for new residents has been approved by the department, all in a format provided by the department, and shall include all of the following information:

(1) A certification, if applicable, that the entity is maintaining reserves for prepaid continuing care contracts, statutory reserves, and refund reserves.

(2) Full details on the status of reserves and on per capita costs of operation for each continuing care retirement community operated. For purposes of this section, "reserves" means the amounts accumulated to provide for future expenditures, including the ~~funded~~ reserves required by Sections 1792.3, 1792.4, and 1792.6, as well as all other reserves, whether funded or nonfunded. "Reserves" also include, but are not limited to, amounts set aside for depreciation *or replacement*, self-insurance, expansion, *improvements*, and contingency, whether separately stated or included in surplus or unrestricted net assets. Details for each reserve shall include all of the following:

(A) The purpose of the reserve.

(B) The method of accumulation.

(C) *The amount to be accumulated.*

~~(E)~~

(D) With respect to nonfunded reserves, the intended source of funds when they are required.

1 (3) Full details on any increase in monthly care fees, the basis
2 for determining the increase, and the data used to calculate the
3 increase.

4 (4) The required reserve calculation schedules shall be
5 accompanied by the auditor's opinion as to compliance with
6 applicable statutes.

7 (5) Any other information as the department may require.

8 (b) Each provider shall file the annual report with the
9 department within four months after the provider's fiscal
10 yearend. If the complete annual report is not received by the due
11 date, a one thousand dollar (\$1,000) late fee shall accompany
12 submission of the reports. If the reports are more than 30 days
13 past due, an additional fee of thirty-three dollars (\$33) for each
14 day over the first 30 days shall accompany submission of the
15 report. The department may, at its discretion, waive the late fee
16 for good cause.

17 (c) The annual report and any amendments thereto shall be
18 signed and certified by the chief executive officer of the provider,
19 stating that, to the best of his or her knowledge and belief, the
20 items are correct.

21 (d) A copy of the most recent annual audited financial
22 statement shall be transmitted by the provider to each transferor
23 requesting the statement.

24 (e) A provider shall amend its annual report on file with the
25 department at any time, without the payment of any additional
26 fee, if an amendment is necessary to prevent the report from
27 containing a material misstatement of fact or omitting a material
28 fact.

29 (f) If a provider is no longer entering into continuing care
30 contracts, and currently is caring for 10 or fewer continuing care
31 residents, the provider may request permission from the
32 department, in lieu of filing the annual report, to establish a trust
33 fund or to secure a performance bond to ensure fulfillment of
34 continuing care contract obligations. The request shall be made
35 each year within 30 days after the provider's fiscal year end. The
36 request shall include the amount of the trust fund or performance
37 bond determined by calculating the projected life costs, less the
38 projected life revenue, for the remaining continuing care
39 residents in the year the provider requests the waiver. If the

1 department approves the request, the following shall be
2 submitted to the department annually:

3 (1) Evidence of trust fund or performance bond and its
4 amount.

5 (2) A list of continuing care contract residents. If the number
6 of continuing care residents exceeds 10 at any time, the provider
7 shall comply with the requirements of this section.

8 (3) A provider fee as required by subdivision (c) of Section
9 1791.

10 (g) If the department determines a provider's annual audited
11 report needs further analysis and investigation, as a result of
12 incomplete and inaccurate financial statements, significant
13 financial deficiencies, development of work out plans to stabilize
14 financial solvency, or for any other reason, the provider shall
15 reimburse the department for reasonable actual costs incurred by
16 the department or its representative. The reimbursed funds shall
17 be deposited in the Continuing Care Contract Provider Fee Fund.